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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 MARTIN S. ROOD, an individual,

13 Plaintiff,

14 v.

15 ARTHUR F. NELSON, an individual; DON  
16 FOSTER SCOGGINS, an individual; JACK  
17 P. GILLESPIE, an individual; APPRAISERS  
18 OF LAS VEGAS, a Nevada corporation;  
19 DOES 1 through 5, and ROE  
20 CORPORATIONS 1 through 5,

21 Defendants.

Case No.: 2:12-cv-00893-GMN-RJJ

**MOTION TO SERVE SUMMONS  
AND COMPLAINT BY  
PUBLICATION ON ARTHUR F  
NELSON**

22 Plaintiff Martin S. Rood through his counsel the Law Office of Robert Spear moves this  
23 Court for an order allowing service of the summons and complaint on Defendant Arthur F.  
24 Nelson and for an appropriate extension of time of about sixty (60) additional days to allow for  
25 service on Mr. Nelson by publication. Plaintiff moves this Court pursuant to Federal Rule of  
26 Civil Procedure 4 based upon the facts set forth in the points and authorities below, the

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1 pleadings and papers on file herein, the affidavit of E. Robert Spear attached hereto, and based  
2 upon any arguments of counsel that this Court may choose to entertain should this Court wish  
3 to set this motion for hearing.  
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5 Dated this 1<sup>st</sup> day of November, 2012.  
6

7 /s/ E. Robert Spear  
8 E. Robert Spear (8672)  
9 LAW OFFICE OF ROBERT SPEAR  
10 3654 North Rancho Drive  
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12 *Attorneys for Plaintiff*  
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## POINTS AND AUTHORITIES

### 1. FACTUAL BACKGROUND.

Plaintiff Martin S. Rood filed his complaint in this action on May 25, 2012. Since that date, Plaintiff has attempted to serve each of the Defendants in this action. To date, undersigned counsel has through various means obtained service of the summons and complaint on Defendant Jack P. Gillespie, on Defendant Appraisers of Las Vegas (by means of service through the Nevada Secretary of State Office), and most recently on Defendant Don Foster Scoggins on September 17, 2012 in Atlanta, Georgia.

Plaintiff has sought to serve the summons and complaint on Defendant Arthur F. Nelson, but has not as yet obtained service on him despite fifteen attempts to serve him at the address Plaintiff has for him in Newport Beach, California.

The date for service of process on Mr. Nelson has not yet passed. On August 29, 2012, this Court entered an order granting Plaintiff's motion to extend time to serve summons and complaint on Don Foster Scoggins and Arthur F. Nelson, giving Plaintiff until December 21, 2012 to serve Defendants Mr. Scoggins and Mr. Nelson. This motion is Plaintiff's second motion related to service of process on Defendant Mr. Nelson.

### 2. LEGAL ARGUMENTS.

#### A. Plaintiff should be allowed to serve Mr. Nelson by publication.

Federal Rule of Civil Procedure 4(e) provides that service of a summons and complaint within a judicial district of the United States is to be made as follows:

Unless federal law provides otherwise, an individual- other than a minor, an incompetent person, or a person whose waiver has been filed- may be served in a judicial district of the United States by:  
(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court

1 is located or where service is made....

2 Nevada Rule of Civil Procedure 4(e)(1)(i) provides that a defendant may be served by  
3 publication as follows:  
4

5 In addition to methods of personal service, when the person on  
6 whom service is to be made resides out of the state, or has departed  
7 from the state, or cannot, after due diligence, be found  
8 within the state, or by concealment seeks to avoid the service of  
9 summons, and the fact shall appear, by affidavit, to the satisfaction  
10 of the court or judge thereof, and it shall appear, either by affidavit  
11 or by a verified complaint on file, that a cause of action exists  
12 against the defendant in respect to whom the service is to be made,  
13 and that the defendant is a necessary or proper party to the action,  
14 such court or judge may grant an order that the service be made by  
15 the publication of summons. Provided, when said affidavit is based  
16 on the fact that the party on whom service is to be made resides out  
17 of the state, and the present address of the party is unknown, it  
18 shall be a sufficient showing of such fact if the affiant shall state  
19 generally in such affidavit that at a previous time such person  
20 resided out of this state in a certain place (naming the place and  
21 stating the latest date known to affiant when such party so resided  
22 there); that such place is the last place in which such party resided  
23 to the knowledge of affiant; that such party no longer resides at  
24 such place; that affiant does not know the present place of  
25 residence of such party or where such party can be found; and that  
26 affiant does not know and has never been informed and has no  
27 reason to believe that such party now resides in this state; and, in  
28 such case, it shall be presumed that such party still resides and  
remains out of the state, and such affidavit shall be deemed to be a  
sufficient showing of due diligence to find the defendant. This rule  
shall apply to all manner of civil actions, including those for  
divorce.

22 Here, the facts support allowing Plaintiff to serve Mr. Nelson by publication.

23 • Based on the best knowledge Plaintiff can find, Mr. Nelson resides in the State of  
24 California, having left the State of Nevada sometime after the facts set forth in the Complaint  
25 (docket #1) and the First Amended Complaint (docket #17).

27 • Plaintiff has exercised due diligence to find Defendant Mr. Nelson as set forth in the  
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1 motion to extend time to serve summons and complaint on Don Foster Scoggins and Arthur F.  
 2 Nelson (docket #23) and in this motion and the attached affidavit of E. Robert Spear and the  
 3 attached affidavit of the process server, Richard Martin. Despite these efforts, Plaintiff has  
 4 been unable to obtain service of process on Defendant Arthur F. Nelson.

6 • Plaintiff has a cause of action against Mr. Nelson as set forth in the First Amended  
 7 Complaint and as set forth in the affidavit of Plaintiff Mr. Rood attached to this motion.

8 • Mr. Nelson is a necessary party to this action. Mr. Nelson was a signatory appraiser to  
 9 the appraisal that is the basis of Plaintiff's complaint, and which Plaintiff alleges was  
 10 negligently performed by each of the Defendants.

12 **B. Plaintiff requests an additional thirty (30) days for service of process by**  
 13 **publication on Mr. Nelson.**

14 Federal Rule of Civil Procedure 4(m) governs extensions of time for service of the  
 15 summons and complaint in a case. This rule states in pertinent part as follows:

16 (m) Time Limit for Service. If a defendant is not served within 120  
 17 days after the complaint is filed, the court--on motion or on its own  
 18 after notice to the plaintiff--must dismiss the action without  
 19 prejudice against that defendant or order that service be made  
 20 within a specified time. But if the plaintiff shows good cause for  
 the failure, the court must extend the time for service for an  
 appropriate period....<sup>1</sup>

21 "When entertaining a motion to extend time for service, the district court must proceed  
 22 in the following manner. First, the district court should determine whether good cause exists  
 23 for an extension of time. If good cause is present, the district court must extend time for service  
 24 and the inquiry is ended."<sup>2</sup>

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27 <sup>1</sup> See Fed. R. of Civ. Proc. 4(m).

28 <sup>2</sup> See *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1305 (3d Cir. Pa. 1995).

1 Here, Plaintiff believes he has shown good cause for his failure to serve Defendant  
2 Arthur F. Nelson. Plaintiff and undersigned counsel have diligently sought to find this  
3 individuals as described in this motion. Despite these efforts, Plaintiff has yet to serve Mr.  
4 Nelson. Even though the date for service of the summons and complaint will not pass until  
5 December 21, 2012, Plaintiff has filed this motion out of an abundance of caution in light of the  
6 difficulty Plaintiff has had locating Mr. Nelson and out of an abundance of caution to allow for  
7 sufficient time to obtain the order approving the motion and serving by publication. Plaintiff  
8 may also need time to substitute a new Defendant into this action, the estate of Mr. Nelson,  
9 prior to proceeding. Accordingly, Plaintiff requests an about additional sixty (60) days in  
10 addition to the time already provided by this Court, or until February 20, 2013.

13 **3. CONCLUSION.**

14 Based upon the foregoing, Plaintiff requests that this Court issue an order allowing  
15 service of the summons and complaint on Defendant Aruthur F. Nelson by publication and for  
16 about an additional sixty (60) days in addition to the time already provided by this Court, or  
17 until February 20, 2013, to serve Defendant Arthur F. Nelson.

19 Dated this 1<sup>st</sup> day of November, 2012.

20  
21 /s/ E. Robert Spear  
22 E. Robert Spear (8672)  
23 LAW OFFICE OF ROBERT SPEAR  
24 3654 North Rancho Drive  
25 Las Vegas, Nevada 89130  
26 *Attorneys for Plaintiff Martin S. Rood*

27 **IT IS SO ORDERED.**

28   
**UNITED STATES MAGISTRATE JUDGE**  
**DATED:** November 5, 2012

**CERTIFICATE OF SERVICE**

Pursuant to FRCP, I certify that I am an employee of LAW OFFICE OF ROBERT SPEAR, and that on this 1<sup>st</sup> day of November, 2012, I caused the above and foregoing document entitled: **MOTION TO SERVE SUMMONS AND COMPLAINT BY PUBLICATION ON ARTHUR F NELSON** to be served as follows:

☒ [ X ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ [ ] by facsimile transmission to the facsimile number(s) shown below and in the confirmation sheet filed herewith; and/or

☐ [ ] to be hand-delivered; to the attorneys listed below at the address and/or facsimile number indicated below:

Steven Don Bennion , Jr.  
BLACK & LOBELLO  
10777 W Twain Ave 300  
Las Vegas, NV 89135  
Attorneys for Defendant

/s/ Sean A. Waugh  
An employee of Law Office of Robert Spear